

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

SBC Communications, Inc.,	:	
SBC Delaware Inc.	:	
Ameritech Corporation,	:	
Illinois Bell Telephone Company	:	
d/b/a Ameritech Illinois, and	:	
Ameritech Illinois Metro, Inc.	:	
	:	98-0555
Joint Application for approval of the	:	
reorganization of Illinois Bell Telephone	:	
Company d/b/a Ameritech Illinois Metro, Inc.	:	
in accordance with Section 7-204 of the	:	
Public Utilities Act and for all other appropriate	:	
relief.	:	

**BRIEF OF MGC COMMUNICATIONS, INC. ON REOPENING**

MGC COMMUNICATIONS, INC. ("MGC") by and through its undersigned attorneys, pursuant to the Rules of Practice of the Illinois Commerce Commission, respectfully submits its brief in the above captioned proceeding. While not taking a broad position on all of the impacts of the merger, MGC would, nonetheless, like to illustrate several issues it experiences while conducting business with Ameritech in Illinois that tend to frustrate competition. To this end, MGC suggests that the Commission consider requiring the Joint Applicants to create policies and procedures that provide a basis to foster real local exchange competition.

**I. INTRODUCTION**

MGC is a rapidly growing integrated communications services provider offering facilities-based local, long distance, voice and data services to residential and small business consumers in the state of Illinois. To date, MGC has raised over 440 million

dollars, enabling it to deploy seven switches, as well as over two hundred fifty collocations in five states. This network deployment has given MGC an addressable market of over 12 million access lines and places MGC in a unique position to provide facilities-based voice, data, and Internet services to the residential and small business consumer. MGC offers the forgotten residential and small business consumers a true alternative to the ILEC and brings the benefits of the competition envisioned by the 1996 Telecom Act to its intended beneficiaries.

In his June 4, 1999 letter to Examiners Goldstein and Moran, Chairman Mathias indicated that he wanted the parties to provide “definite information and possible conditions which would ameliorate . . . Commissioner’s concerns regarding the local exchange market in Illinois . . . and lead to specific conclusions, timetables and enforcement mechanisms that allow the Commissioners to reach a well-reasoned conclusion in this matter.” Among the issues raised in that letter were those related to interconnection (Issue 2), Operations Support Services (Issues 4 and 6), Unbundling (Issue7) and Section 251 compliance (Issue 10). Each of these issues impacts the provision of services by MGC.

The Commission should understand the nature of the services that MGC provides in order to understand its concerns with the merger of SBC and Ameritech. As with several other parties in this proceeding, MGC provides integrated voice and data services to residential and small business customers over unbundled local loops it provisions through ILEC central office collocation.

MGC believes that the SBC-Ameritech merger will fail the criteria set forth in

the Illinois Public Utilities Act unless this Commission imposes conditions that protect the public interest. While other parties have addressed the wide range of conditions that should be imposed on SBC/Ameritech, MGC is concerned with conditions that affect its ability to offer voice and data services over the unbundled local loop. Thus, this brief will focus on a limited number of the conditions recommended by parties in this case. Adoption of the conditions discussed below would assist companies such as MGC in offering to the Illinois public innovative and cost effective voice and data services.

## **II. CONDITIONS FOR APPROVAL OF THE MERGER**

The Commission should understand that CLECs such as MGC have particular engineering requirements and concerns regarding service ordering. ACI witness Ms. Jo Gentry provided a good summary of these particular concerns:

To provide DSL service, ACI is depends on the ILECs for three primary components. First, ACI must lease “clean” copper loops that are unfettered with any interfering loop equipment such as load coils and excessive bridge taps. Second, ACI needs to be able to collocate and maintain equipment at the incumbent ILEC’s end of the loop, generally at or near the ILEC’s Central Office. Third, ACI often requires timely provision of unbundled transport facilities from the ILEC because competitive interoffice transport alternatives are often unavailable.

Gentry at 3.

This list of issues reflects those that MGC has faced as it offers its DSL services. As described below, Ameritech hinders the provision of competitive DSL service by making it difficult for MGC to know whether a particular loop has “clean”

copper capable of providing DSL service. In those cases where it does not, Ameritech imposes exorbitant charges in order to “condition” copper loops. Similarly, Ameritech imposes exorbitant charges for the installation of new transport facilities in instances where it claims that its existing transport facilities are exhausted and thus “unavailable.”

The Commission should also understand that Ameritech competes with MGC for voice and data service. As noted by Ms. Gentry:

Ameritech recently rolled out its retail DSL offering, called Speedpath™ DSL service, and announced plans (on its Internet site) to have it available to “70% of the Great Lakes region . . . [b]y the end of the century”. In addition, for years most ILECs have provisioned 1.544 mbps “T-1” services using High bit rate DSL (“HDSL”) technology. When DSL is deployed to its full capacity, it can often compete with much higher-priced ILEC T-1 offerings.

Gentry at 4.

Thus, Ameritech has an incentive to impede the development of xDSL service. As discussed below, Ameritech has acted on that incentive by engaging in practices that hinder the development of competitive xDSL service. MGC therefore supports the recommendation of Ms. Gentry that the Commission impose four conditions on the merger. Those conditions are as follows:

1. The Joint Applicants should be required to work with Commission staff and CLECs to develop an xDSL-capable loop offering within the next 45 days that is not length or technology restrictive and is available to all CLECs.
2. The Joint Applicants should immediately make available on a preordering basis data regarding loop characteristics and makeup.

3. The Joint Applicants should be prohibited from providing their xDSL services to customers in any central office where a data CLEC can demonstrate to the Commission that it is routinely unable to provision 90% or more of the loops ordered for the provisioning of advanced services.
4. As a best practice, Joint Applicants should be required to make available to any requesting CLEC any term or condition in any interconnection agreement, arbitration, or other state commission or court ruling that applies anywhere in their regions.

Gentry at 2-3.

Each of these conditions is discussed below.

**A. xDSL-CAPABLE LOOP OFFERING**

As noted by Ms Gentry, providers of DSL may wish to deploy ADSL (including RADSL), SDSL, TDSL and IDSL in Illinois. The choice of DSL platform depends upon a number of variables, primarily the length of loop and the existence of repeaters or Digital Loop Carrier systems on the loop. Accordingly, CLECs must be empowered to utilize any type of local loop to provide whatever xDSL service it is technically able to deploy.

The FCC's Advanced Services Order holds that "any technology which has been successfully deployed by any carrier without significantly degrading the performance of other services . . . is presumed acceptable for deployment."<sup>1</sup> Further,

---

<sup>1</sup> *Deployment of Wireless Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147 ¶67 (rel. March 31, 1999)

the FCC declared that “incumbent LECs should not unilaterally determine what technologies LECs, both competitive LECs and incumbent LECs, may deploy”.<sup>2</sup> Accordingly, CLECs should not be constrained to deploy only those services the underlying ILEC has chosen to provide.<sup>3</sup>

Ms. Gentry therefore recommended that the Commission require Ameritech to provision all loop types that are capable of supporting each of the types of xDSL described above. She added:

the Commission should require Ameritech to provide “xDSL-capable loops” to carriers for provision of high-speed data services using all types of DSL, including ADSL, RADSL, SDSL and IDSL. CLECs should retain the right to decide which xDSL services they wish to provision, and should not have access to ILEC facilities barred because of the length of the loop.

Gentry at 6

This issue of “clean copper loops” is important to DSL providers such as MGC because the presence of load coils, repeaters, minimal bridged taps, and DLC systems on a loop preclude or impair the use of xDSL on the loop. Ms. Gentry showed that, while these devices or technologies allow analog POTS signals to be transmitted over the loop in question, it is technically feasible to “clean up” copper such that it can provide DSL service while still providing high quality POTS voice signal.

Imposing this condition on the applicants is consistent with the FCC’s

---

(“*Advanced Services Order*”).

<sup>2</sup> Id. at ¶63.

<sup>3</sup> *Implementation of the Local Competition Provisions of the 1996 Act*, First Report and Order, 11 FCC Rcd. ¶292 (1996) (“*Local Competition Order*”).

requirement that ILECs must “take affirmative steps to condition existing loop facilities”<sup>4</sup>, including “conditioned” loops capable of transmitting high-speed digital signals.”<sup>5</sup>

Regarding prices for loop, Ms. Gentry noted that xDSL services require precisely the same loop that supports traditional voice telephony and thus there is no basis for a difference in price between these facilities. As a result, Ameritech UNE loop rates for xDSL-based services should not be greater than the UNE loop rate for two-wire analog loops. Nevertheless, Ameritech levies excessive “special construction” charges for virtually any conditioning needed to provide xDSL service. This would include removal of load coils, bridge taps, BRITE cards or repeaters. As noted by Ms. Gentry, these charges average approximately \$9,000 per loop and have been as high as \$360,000 for a single loop. Gentry at 8. David R. Conn, who testified on behalf of McLeodUSA reported that his company has been assessed similar charges. Such costs, which have no relationship to TELRIC costs, are prohibitively high and preclude DSL carriers from offering customers service because they cannot be recovered from customers over the predicted service lives.

Ameritech’s practice of charging exorbitant rates for loop conditioning should not be allowed. Loop conditioning is a routine practice performed daily by incumbent LEC’s for their own retail customers. Ameritech does not charge its customers

---

<sup>4</sup> *Local Competition Order* at 15,499, 15,689-91.

<sup>5</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, FCC 98-188 ¶32 (Aug. 7, 1998) (“*Advances Services MO & O*”).

anytime it performs loop conditioning. If Ameritech establishes a subsidiary to offer DSL service, will it charge that subsidiary \$9,000 to condition loops? Of course not. As noted by Ms. Gentry, “ILECs regularly add and remove repeaters, bridge taps and load coils to their facilities, and routinely provide access to existing parallel copper where DLC exists – always at no direct charge to their retail customers.” Gentry at 9. MGC therefore strongly endorses Ms. Gentry’s recommendation that the Commission forbid the Joint Applicants from charging special construction charges for loop conditioning. As noted by Ms. Gentry, the TELRIC costs of conditioning is zero because a forward looking network would be DSL compatible. Gentry at 9. Thus, a zero cost for reconditioning would be supported by TELRIC costs.

## **B. DATA REGARDING LOOP CHARACTERISTICS AND MAKEUP**

Ms. Gentry testified that the pre-qualification loop makeup information currently provided by Ameritech fails to provide CLECs with meaningful access to the necessary loop information in Ameritech’s existing databases. Thus, in order to meet the requirements established by the FCC for access to operations support systems (“OSS”), this Commission should require Ameritech to provide CLECs with mediated (read only) access to loop OSS and associated databases.

MGC agrees with this recommendation. DSL providers require access to real-time, fully electronic information about the physical makeup of the loop including loop length, presence and numbers of repeaters, load coils and bridged taps and existence of digital loop carrier. Ameritech’s loop qualification database does not meet this need.



Gentry at 10.

As noted above, DSL providers deploy a variety of xDSL technologies, depending upon the particular characteristics of Ameritech's loop plant serving individual customers. The only way to determine which DSL technology should be used for a particular customer, or if the loop in question is capable of supporting any particular xDSL technology, is to review complete loop make-up information about each loop. That information should be by 24-hour on-line access to an ILEC's database via computer. As noted by Ms. Gentry:

Electronic access allows CLECs greater flexibility in structuring their workforce, because on-line systems could be used 24-hours per day to research the suitability of customer loops to support DSL. Electronic systems can also support much greater volumes of inquiries than will manual systems. In addition, ILECs may have internal electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over competitors such as ACI. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.

. . .

An electronic ordering system should provide 24-hour on-line access to an ILEC database via a computer. Any CLEC trying to determine whether a customer's loop is suitable for DSL should be able within a

few seconds to access information about the technical make-up of a particular customer's loop. Loop make-up information should identify equipment and technical characteristics associated with the loop. That information should include the following: the physical medium of the loop (*i.e.*, copper or fiber); loop length in equivalent 26 gauge; the length and location of bridged taps; and the presence of load coils, repeaters, DLC systems or DAMLs. This information resides in Ameritech's systems such as LFACS. ACI needs real-time, electronic mediated access to these existing systems. Such technical elements affect the usability of the loop, and in some instances may preclude the provision of DSL services. Therefore, ACI must have access to exact loop make-up information.

Gentry at 13-14.

Providing such information would be consistent with the FCC's March *Advanced Services Order*, where it required ILECs to "disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and the type of technologies deployed on those loops."<sup>6</sup> It is also consistent with the FCC's earlier *Local Competition order*, where it held that ILECs should provide competing caters with the information necessary to formulate an accurate order for a customer, including "access to the information such systems

---

<sup>6</sup> *Advanced Services Order* ¶73.

contain.”<sup>7</sup>

Ms. Gentry recommended that the Commission require Ameritech to provide real-time access to its loop makeup information, and if it does not currently have such a system in place, it should be required to develop the system within six months. She added that until Ameritech has a mechanized system in place, it should provide manual access to loop makeup information, and the information should be provided within 3-5 days of a request, but in no event longer than the analogous loop make-up information interval applicable to Ameritech’s retail DSL-based services. MGC agrees with each of these recommendations.

### **C. AMERITECH/SBC OFFERING OF xDSL**

Because Ameritech and SBC have their own plans to provide advanced services, including forms of xDSL, they have an incentive to block CLECs from provisioning xDSL in a timely manner. The best way to ensure that they do not act in an anticompetitive manner is to prohibit their offering of xDSL services until they have shown that they are capable of meeting the needs of providers such as MGC. Thus, Ms. Gentry recommended that the Joint Applicants be prohibited from providing their xDSL services to customers in any central office where a CLEC can demonstrate to the Commission that it is routinely unable to provision 90% or more of the loops ordered for the provisioning of advanced services. This condition, along with appropriate

---

<sup>7</sup> *Local Competition Order* ¶518; *Advanced Services MO & O* ¶56 n. 103.

liquidated damages for failure to meet performance criteria, should reduce the Joint Applicants' incentive to act in an anticompetitive manner.

**D. AVAILABILITY OF ARBITRATED, NEGOTIATED AND COURT OR COMMISSION IMPOSED TERMS AND CONDITIONS**

The Commission should insist that SBC-Ameritech modify Interconnection Commitment A so that it will make available, upon a carrier's request, any method, term or condition of interconnection and nondiscriminatory access to unbundled network elements that SBC-Ameritech offers or provides in any other states, *i.e.*, including arbitrated terms and conditions and terms and conditions imposed by courts or state regulatory commissions..

Interconnection Commitment A (made in response to Chairman Mathias's Question No. 2 in Attachment A to his June 4<sup>th</sup> letter) states that SBC-Ameritech will only offer terms and conditions of interconnection and access that SBC "voluntarily" agrees to provide to CLECs in other states. Limiting the ability to opt into other terms and conditions to those that have been "voluntarily" agreed upon severely diminishes the benefit of this commitment and creates an incentive for SBC/Ameritech to arbitrate every marginal issue. As noted by Mr. Morris, who testified on behalf of Sprint, limiting this condition to negotiated agreements severely reduces its benefit to Illinois because it takes off the table the commitments that SBC and Ameritech only make under regulatory pressure:

It has been Sprint's experience with the Joint Applicants that they have been

generally unwilling to voluntarily agree to many terms and conditions that are vital to competitive entry. It has taken arbitration before various commissions to gain many of the terms and conditions that are available today. The arbitrated terms and conditions may be thought of as the “best practices” available. The Joint Applicants, desiring to keep the entry bar high, are resisting the implementation of “best practices” in Illinois by proposing to bar the use of arbitrated terms and conditions from other states in Illinois.

Morris at 7.

Mr. Deanhardt also testified that Covad has found litigation and arbitration have been the only means of making progress in obtaining collocation and unbundled elements from SBC and its affiliates. Adoption of SBC/Ameritech’s proposal would deny other carriers of the benefits of arbitration awards in other states. As noted by Mr. Deanhardt:

Our experience tells us that SBC-Ameritech’s proposal would only encourage SBC and Ameritech to arbitrate every questionable issue in all other states – because in doing so, they would minimize the number of “voluntary” commitments they would have to make available in Illinois.

In summary, what SBC-Ameritech promise to provide in Interconnection Commitment A – “voluntary” terms – will not amount to much. In general, non-arbitrated clauses are not arms-length arrangements, and they are “voluntary” only in the sense that the requesting carrier has “voluntarily” decided that it was better off getting

into business in a state with a markedly inferior interconnection agreement than to be shut out of the state entirely. ILECs like SBC understand this motivation and use the leverage to the hilt. The most significant issues – such as the rates, terms and conditions of nondiscriminatory access to collocation and unbundled xDSL loops – are resolved more favorably to CLECs in arbitrations.

Deanhardt at 6-7.

Mr. Deanhardt testified that SBC has forced carriers to arbitrate several important issues, such as loop availability, spectrum management policy, OSS access and collocation rights. More specifically, Covad and Accelerated Connections, Inc. (“ACI”), additional national DSL CLECs, are currently engaged in an interconnection arbitration relating specifically to DSL service. The issues in that arbitration proceeding include: the method by which Covad will obtain nondiscriminatory access to xDSL-compatible loops, SBC’s DSL spectrum management policy, and OSS (including access to fundamental network information).

This Commission should not allow SBC/Ameritech to avoid implementing the findings in that arbitration in Illinois by making a distinction between negotiated and arbitrated decisions. This is particularly true for smaller carriers that are interested in issues relating to DSL service. As noted by Mr. Deanhardt:

Oftentimes, a CLEC like Covad must settle for “second (or third, or fourth) best” agreements in certain states because resource requirements and business necessity mean that arbitrating in every state is not an option. Because every month of arbitration is a month in which CLECs like Covad cannot enter the market or provide more efficient service to

consumers, ILECs like SBC and Ameritech have an incentive to continue this litigious, state-by-state process. The reality is that requesting carriers cannot afford to litigate every issue in every state, and this Commission does not have the resources to litigate every issue in Illinois.

Deanhardt at 7.

SBC/Ameritech's unwillingness to allow carriers in Illinois to gain the same benefits that DSL providers will have in Texas undermines the Joint Applicants' claims that one of the benefits of the merger is that Illinois will gain the benefits of SBC's "expertise" in DSL service. It also undermines their commitment to deploy ADSL service in Illinois as a condition of the merger (Additional Commitment F).

The Texas Proposed Interconnection Agreement ("PIA") is another example of an important arbitration proceeding whose benefits would be unavailable to Illinois. Mr. Morris testified that many of the CLECs that are participating in this proceeding participated in the negotiations that resulted in the PIA. He stated that Illinois' adoption of either the PIA in its entirety or the particular terms from the PIA would prevent the parties from "reinventing the wheel." Morris at 9.

## **CONCLUSION**

MGC and other providers of xDSL based telecommunications carriers are in the forefront of providing customers with cost effective, efficient data and voice communications. The Commission should take this opportunity to knock down the roadblocks thrown up by Ameritech that have prevented customers from receiving the full benefit of these exciting services.

Respectfully submitted,  
MGC Communications, Inc.

Dated: July 28, 1999

By:\_\_\_\_\_

Its attorneys

Kent F. Heyman  
Vice President & General Counsel  
Scott A. Sarem,  
Asst. Vice President Regulatory Affairs  
3301 N. Buffalo Drive  
Las Vegas, NV 89129  
(702) 310-8258  
(702) 310-4272  
(702) 310-5689 (facsimile)

Stephen J. Moore  
Rowland & Moore  
55 East Monroe Street  
Chicago, Illinois 60603  
(312) 803-1000  
(312) 803-0953 (facsimile)  
r&m@telecomreg.com